

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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GERALD JEROME POLK,

Petitioner,

v.

STATE OF NEVADA, et al.,

Respondents.

Case No. 2:21-cv-00513-RFB-DJA

ORDER

This is *pro se* petitioner Gerald Jerome Polk's 28 U.S.C. § 2254 habeas petition. He has now paid the filing fee (see ECF No. 7). The court has reviewed the petition pursuant to Habeas Rule 4 and directs that it be served on respondents.

A petition for federal habeas corpus should include all claims for relief of which petitioner is aware. If petitioner fails to include such a claim in his petition, he may be forever barred from seeking federal habeas relief upon that claim. See 28 U.S.C. §2254(b) (successive petitions). If petitioner is aware of any claim not included in his petition, he should notify the court of that as soon as possible, perhaps by means of a motion to amend his petition to add the claim.

**IT IS THEREFORE ORDERED** that the Clerk detach, file, and electronically SERVE the petition (ECF No. 1-1) on the respondents.

**IT IS FURTHER ORDERED** that the Clerk add Aaron D. Ford, Nevada Attorney General, as counsel for respondents and provide respondents an electronic copy of all items previously filed in this case by regenerating the Notice of Electronic Filing to the office of the AG only.

1           **IT IS FURTHER ORDERED** that respondents file a response to the petition,  
2 including potentially by motion to dismiss, within **90 days** of service of the petition, with  
3 any requests for relief by petitioner by motion otherwise being subject to the normal  
4 briefing schedule under the local rules. Any response filed is to comply with the  
5 remaining provisions below, which are entered pursuant to Habeas Rule 5.  
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7           **IT IS FURTHER ORDERED** that any procedural defenses raised by respondents  
8 in this case be raised together in a single consolidated motion to dismiss. In other words,  
9 the court does not wish to address any procedural defenses raised herein either in  
10 seriatum fashion in multiple successive motions to dismiss or embedded in the answer.  
11 Procedural defenses omitted from such motion to dismiss will be subject to potential  
12 waiver. Respondents should not file a response in this case that consolidates their  
13 procedural defenses, if any, with their response on the merits, except pursuant to 28  
14 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If respondents  
15 do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they will do so within the  
16 single motion to dismiss not in the answer; and (b) they will specifically direct their  
17 argument to the standard for dismissal under § 2254(b)(2) set forth in Cassett v. Stewart,  
18 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural defenses, including  
19 exhaustion, should be included with the merits in an answer. All procedural defenses,  
20 including exhaustion, instead must be raised by motion to dismiss.  
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23           **IT IS FURTHER ORDERED** that, in any answer filed on the merits, respondents  
24 specifically cite to and address the applicable state court written decision and state court  
25 record materials, if any, regarding each claim within the response as to that claim.  
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27           **IT IS FURTHER ORDERED** that petitioner has **45 days** from service of the answer,  
28 motion to dismiss, or other response to file a reply or opposition, with any other requests

1 for relief by respondents by motion otherwise being subject to the normal briefing  
2 schedule under the local rules.

3 **IT IS FURTHER ORDERED** that any additional state court record exhibits filed  
4 herein by either petitioner or respondents be filed with a separate index of exhibits  
5 identifying the exhibits by number. The parties will identify filed CM/ECF attachments by  
6 the number or numbers of the exhibits in the attachment.  
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8 **IT IS FURTHER ORDERED** that, at this time, the parties send courtesy copies of  
9 **any responsive pleading or motion and all INDICES OF EXHIBITS ONLY** to the Reno  
10 Division of this court. Courtesy copies shall be mailed to the Clerk of Court, 400 S.  
11 Virginia St., Reno, NV, 89501, and directed to the attention of "Staff Attorney" on the  
12 outside of the mailing address label. **No further courtesy copies are required unless**  
13 **and until requested by the court.**  
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17 DATED: 18 August 2021.



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19 RICHARD F. BOULWARE, II  
20 UNITED STATES DISTRICT JUDGE  
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